In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1194

JOSEPH A. CHASE, PETITIONER

v.

UNITED STATES OF AMERICA

No. 1538 Misc.

ROBERT PARRISH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 1967. On February 18, 1967, the Chief Justice extended the time for filing petitions for writs

of certiorari to March 27, 1967. Petitioner Chase (No. 1194) filed his petition on that day. Petitioner Parrish (No. 1538 Misc.) filed his petition on March 23, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Both petitioners present the following question:

1. Whether they were prejudiced by the admission of evidence relating to events occurring after the termination of the conspiracy.

Petitioner Parrish (No. 1538 Misc.) alone raises the following question:

2. Whether the trial court erred in permitting cross-examination and rebuttal testimony tending to show that Parrish had worked for another numbers operator in the period embraced by the indictment.

Petitioner Chase (No. 1194) alone presents the following questions:

3. Whether the trial court erroneously refused to give an entrapment and other tendered instructions.

4. Whether the fact that the government used an informer requires reversal as a matter of law.

5. Whether the evidence was sufficient to support the convictions.

STATEMENT

After a jury trial, petitioner Chase was convicted on sixteen counts, and petitioner Parrish on four counts, of an indictment charging travel, and aiding and abetting travel, in interstate commerce in aid of gambling; interstate transportation, and aiding and abetting interstate transportation, of gambling para-

phernalia; and conspiracy, in violation of 18 U.S.C. 2, 371, 1084, 1952 and 1953. On April 12, 1966, Chase was sentenced to imprisonment for five years on each count, the terms to run concurrently and two years to be suspended upon payment of a $2500 fine. On April 14, 1966, Parrish was sentenced to imprisonment for eleven months on each count, the terms to run concurrently and the entire sentence to be suspended upon payment of a $2500 fine. The court of appeals reversed the convictions of Chase on the substantive offenses charged in Counts 2 and 3,[1] and the conviction of Parrish on the conspiracy count. In all other respects, the convictions were affirmed.

The charges arose out of a gambling operation conducted between the Navy Annex in Arlington, Virginia, and the District of Columbia. The indictment alleged that the conspiracy began in January 1962 and ended on July 10, 1965.[2] The substantive offenses for which petitioners were convicted were alleged and proved to have occurred between January 1962 and April 2, 1965.

Co-conspirator Austin Carr, who, in the early part of 1962, was a civilian employee at the Navy Annex in Arlington, testified that he wrote bets at the Annex

[1] Counts 2 and 3 were dismissed on the ground that they lacked specificity.

[2] The original indictment was returned on July 13, 1965. A superseding indictment was returned on October 6, 1965. Trial was commenced on November 8, 1965, but a mistrial was granted, on motion of the defendants, because of prejudicial publicity. The present trial commenced on February 14, 1966. The superseding indictment and transcript of trial ("Tr.") have been lodged with the Clerk of this Court.

and turned them, together with the collections, over to one Clay (Tr. 4–5). After Carr and Clay experienced difficulty in paying off a winning bet, Carr began writing numbers for petitioner Chase (Tr. 6–9). On some occasions, Carr handed the "work" directly to Chase, while at other times the "work" was left for Chase concealed under a water cooler at the Navy Annex (Tr. 10–11). Settlement between Chase and Carr was made each weekend at the latter's home (Tr. 15–18). In August 1964, after Carr was transferred to the Main Navy Building in the District of Columbia, he enlisted the services of Roosevelt Harrison and William Triplett to assemble the "work" at the Navy Annex and deliver it to him at Main Navy. The other steps of the operation remained substantially the same (Tr. 18–25).

In March 1965, Triplett stopped transporting the numbers "work," and Carr arranged for petitioner Parrish to continue in Triplett's place. Carr agreed to pay Parrish $1.50 per day for his services (Tr. 26–28). Parrish was observed by federal agents on several occasions entering Room 1029 at the Navy Annex and picking up an envelope which he brought to Main Navy (Tr. 28, 367–369, 392–396). This activity continued until a raid on April 5, 1965, which resulted in the arrest of a number of the participants, including Parrish and Carr (Tr. 35, 61).

After Carr's arrest on April 5, he volunteered to cooperate with agents of the Provost Marshal and the Internal Revenue Service. Carr subsequently arranged meetings with Chase, under government sur-

veillance, and continued placing bets, using government money for this purpose (Tr. 38-59). On July 9, special agents and Metropolitan Police conducted a raid on two premises located in the District of Columbia. From Chase's home, they seized certain gambling sheets and tapes which Carr had given to Chase during the period that he was cooperating with the government (Tr. 473-479). These sheets and tapes were admitted in evidence.

In his charge, the court instructed the jury that acts and statements of co-conspirators, made in furtherance and during the pendency of the conspiracy, were admissible as against all other conspirators to prove the conspiracy charge. With respect to the substantive charges, however, the court instructed that each person was to be judged on his own statements and conduct, and not that of others (Tr. 870).

ARGUMENT

1. The court of appeals held that, as a matter of law, the alleged conspiracy terminated on April 5, 1965, when Parrish and Carr were arrested. It found that the district court's instructions erroneously allowed the jury to consider evidence relating to Chase's conduct after the April 5th raid against Parrish and accordingly reversed the conviction of Parrish for conspiracy.

a. The court properly refused to reverse the convictions of Parrish on the substantive counts. With respect to these counts, the jury was specifically instructed that, in determining Parrish's guilt or innocence, it should consider only Parrish's acts and

conduct, and not that of others. It cannot be assumed that the jury failed to follow these specific instructions. *Delli Paoli* v. *United States,* 352 U.S. 232, 242. And there was ample evidence, relating to Parrish directly, that established his guilt of the substantive offenses.

b. As to Chase, evidence of his own acts and conduct subsequent to April 5 was properly held admissible to prove that he had in fact been a member of the conspiracy. Closely related in time, those activities were admissible to show both the continuing pattern of the conspiracy and his criminal intent and knowledge. *Kowalchuk* v. *United States,* 176 F. 2d 873, 878 (C.A. 6); *Roe* v. *United States,* 316 F. 2d 617 (C.A. 5). Any danger that the jury may have seized upon this conduct as proof of an overt act was remote; the jury was specifically instructed that it must find at least one of the overt acts alleged in the indictment (Tr. 883) and all of those acts antedated April 5. In any event, the admission of this evidence could not have prejudiced Chase, since all of the substantive counts were confined to specific dates prior to April 5 and the sentence is fully supported by the convictions on these substantive counts. See *Hirabayashi* v. *United States,* 320 U.S. 81, 85; *Lawn* v. *United States,* 355 U.S. 339.

2. Parrish, testifying in his own behalf, admitted picking up envelopes at the Navy Annex, but denied that he was aware of the contents (Tr. 707–708). On cross-examination, Parrish was asked whether he knew a numbers operator named Jones at Main Navy

(Tr. 718, 720–721, 725) and whether Jones had given him bond money (Tr. 724). Parrish answered in the negative. Carr, called in rebuttal, testified that Parrish, when he went to the Navy Annex on one occasion, said that he was going to pick up "work" belonging to both Carr and Jones (Tr. 794, 798–799). Carr also testified that Parrish had said that Jones was going to give him $125 for a bail bond (Tr. 795).

In light of Parrish's defense that he was unaware of the contents of the envelopes which he carried from the Navy Annex to Main Navy, the questions put to Parrish on cross-examination were proper. This was not an attempt to ask irrelevant questions of the witness merely to discredit him later on rebuttal. Parrish's association with another numbers operator was clearly relevant to show that he did in fact know of the purpose of his daily missions to the Navy Annex.[3]

3. Chase contends that the trial court erroneously refused to instruct the jury on entrapment. The record does not disclose a request for such instruction, and there was no occasion for it. The record discloses no more than that the government, in using Carr as a decoy after April 5, afforded Chase an opportunity to continue his gambling activities. There was no evidence tending to show that he was induced to commit the offenses with which he was charged, *i.e.*, gambling

[3] Although Parrish contends (Pet. 4) that the government asked the questions and offered the rebuttal solely for impeachment purposes, the record shows that the government attempted to prove that Parrish was aware that he was transporting numbers material (see Tr. 719).

activities *before* April 5. There was thus no issue of fact for the jury. See *Lopez* v. *United States*, 373 U.S. 427; *United States* v. *Riley*, 363 F. 2d 955, 959 (C.A. 2).

Chase also contends that the trial court erroneously refused to give certain instructions (relating to proof of conspiracy and the effect of prior inconsistent statements) which he tendered to the court (Chase Pet. 8–9). The substance of these instructions was covered by the court's charge (Tr. 863–867, 896–897) and Chase was not entitled to have the charges given in the exact language requested.

4. Chase further assails his conviction on the grounds that Carr, then a government informer, was deceptively "placed in the 'midst' so to speak, of Joe Chase, for the express purpose of obtaining evidence." (Chase Pet. 8.) Chase's "misplaced confidence" in Carr, however, is not a ground for setting aside his conviction. *Hoffa* v. *United States*, 385 U.S. 293, 302.

5. There was sufficient evidence from which the jury could conclude that Chase conspired with Carr to violate the gambling laws and that he caused the other defendants, including Parrish, to travel in interstate commerce in aid of gambling and to transport gambling paraphernalia. That he did not personally know all of the other co-conspirators is of no moment. See *Blumenthal* v. *United States*, 332 U.S. 539, 557. When he actively continued his arrangements with Carr after the latter had been transferred to the Main Navy building in the Dis-

trict of Columbia, he must have contemplated that Carr would make some arrangement for bringing in the "work" collected at the Navy Annex in Virginia.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for writs of certiorari should be denied.

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